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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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In Re NASSAU COUNTY	:	
STRIP SEARCH CASES	:	CV 99-3126 (DRH)
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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF CERTIFICATION OF A  
DAMAGES CLASS PURSUANT TO F.R.C.P. 23(B)(3)**

Plaintiffs, on behalf of the certified liability class, respectfully submit this legal memorandum in support of class certification to resolve the class's compensatory and punitive damages claims, now that judgment has been granted to the class on liability.

I. INTRODUCTION

At the end of its August 24 decision directing the certification of a liability class, the Second Circuit said with respect to a damages class:

In light of our direction to certify a class on the issue of liability . . . we also instruct the District Court to consider anew whether to certify a class to damages as well. The District Court should bear in mind that “[t]here are a number of management tools available to a district court to address any individualized damages issues.”

In re Nassau County Strip Search Cases, 461 F.3d 219, 231 (2d Cir. 2006) (citations omitted)

As this Court appeared to recognize at the November 28, 2006 conference, and as argued more fully below, the Second Circuit has suggested strongly that the class plaintiffs’ damages claims should be addressed on a class-wide basis, and that this Court should exercise its discretion to determine the best way to do so in these particular circumstances. We discern this suggestion not merely from the appellate court’s language, but also from the legal principles upon which it based its decision to certify the liability class, which apply equally to the issue of damages certification and which militate strongly in favor of certification.

This Court would not be charting new territory by certifying a damages class. As noted below, several other courts in the Second Circuit and elsewhere have certified damages classes in strip search cases. On the other hand, should this Court decline to certify a damages class, the real-world consequences would be devastating to the class, and to the class members’ ability to press their damages claims. While each of the approximately 23,000 members would *theoretically* have the right to retain counsel and press his or her compensatory and punitive damages claims individually, we know from past experience in this County and in other strip search cases around the country that few would likely have the wherewithal and resources to

follow through on their own by locating and hiring an attorney to bring an individual action. Thus, *practically*, not certifying a damages class would mean the end of the case for almost all 23,000, and they would recover nothing notwithstanding defendants' concession that all suffered a human dignity and constitutional rights violation. This would be a manifestly unjust result, and one contrary to the reasoning and purpose of the Second Circuit's decision.

As the Second Circuit noted in its August 24 decision, there are numerous ways to deal with damages on a class-wide basis after certification. As discussed below, damages have been awarded on a class-wide basis in numerous strip search cases, using methods which could easily be applied in this case. Certifying a damages class and adopting one of these mechanisms for adjudicating damages would be the fairest, most efficient, and most logical way to conclude this case and adhere to the Second Circuit's mandate.

## II. THE SECOND CIRCUIT DECISION STRONGLY SUGGESTS DETERMINING DAMAGES ON A CLASS-WIDE BASIS

A review of the Second Circuit's August 24 decision strongly suggests that certification of a damages class is the proper course of action for this Court to take. This is based not only on the language of the opinion itself, including the explicit and pointed instructions to consider certifying a damages class, but also on its principal justifications for ordering certification of the liability class.

### A. The Plain Language of its Opinion Reveals the Second Circuit's View that this Court Should Certify a Damages Class

By "instruct[ing]" this Court "to consider anew" whether to certify a class on damages as well as liability, and by cautioning it that it "should bear in mind" that "there are a number of management tools available" to a district court "to address any individualized damages issues,"

we respectfully contend that the Court of Appeals made patent its view that certification appears to be just as appropriate in this case for damages as it was for liability. The appellate court could simply have remanded the case for liability certification and further proceedings as this Court deemed fit and proper. It did not. Instead, the Second Circuit reached out to suggest damages certification as well, specifically referring to prior Circuit case law emphasizing the various ways to manage a damages class. Accordingly, the most logical reading of the August 24 decision is that it signals that certification of a damages class is warranted and would be appropriate in this case, leaving to the discretion of this Court how best to structure and manage the damages class to resolve the damages claims most fairly and efficiently on a class-wide basis.

B. The Principles Underlying the Second Circuit's Decision to Certify a Liability Class Apply to Certification of a Damages Class

This reading of the decision is supported not merely by its language but also by the principles which the Court of Appeals held required certification on liability; for those very same principles strongly support certification on damages as well. Time and again the Second Circuit, citing its own precedent as well as the Federal Rules and Advisory Committee Notes, emphasized the foundational purpose of using the class action mechanism, namely the need to adjudicate claims in the fairest and most efficient manner possible. Thus, in assessing the nature of this case and the justification for certification of a liability class, the Second Circuit stated that the purpose of the class action mechanism is to “achieve economies of time, effort, and expense, and to promote uniformity of decision to persons similarly situated . . . .” In re Nassau County Strip Search Cases, 461 F.3d at 225, citing F.R.C.P. 23(b)(3) Adv. Com. N. to 1966 Amend. And again, citing the Advisory Committee Notes to the Federal Rules and stating that Rule 23

“seeks greater efficiency via collective adjudication and, relatedly, greater uniformity of decision as to similarly situated parties.” Id. at 228. Ultimately it was the Second Circuit’s emphasis on this foundational principle that led it to find that certification was the fairest and most efficient method of adjudicating these claims and thus the superior way to proceed. Id. at 230. Notably, one key component of the Second Circuit’s finding was its view that “concentrating the litigation in one forum streamlines the litigation process.” Id.

While the Second Circuit’s analysis focused on certification for liability purposes, its reasoning, and these Rule 23 principles upon which it is based, are equally applicable to certification for purposes of damages. There can be no doubt that adjudicating damages on a class-wide basis is the fairest and by far most efficient way to proceed.

For while a liability judgment and notice to the class would be significant developments in making the 23,000 class members aware of their rights and initially affording them a theoretical opportunity to seek vindication of those rights, such judgment and notice would not be remotely sufficient in these circumstances to enable them actually to obtain relief. The class members here are not sophisticated businessmen well-versed in obtaining counsel to press civil claims. Most are among the more marginalized persons in our society, with the least resources – in short, the least likely among us to be able to press the rest of the way on their own. See, e.g., D’alauro v. GC Services Ltd. Partnership, 168 F.R.D. 451, 458 (E.D.N.Y. 1996) (in considering Rule 23(b)(3) superiority, it “is appropriate for the court to consider the ‘inability of the poor or uninformed to enforce their rights and the improbability that large numbers of class members would possess the initiative to litigate individually’”) (quoting Haynes v. Logan Furniture Mart, Inc., 503 F.2d 1161, 1165 (7th Cir. 1974)); Rodriguez v. Carlson, 166 F.R.D. 465 (E.D. Wash.

1996) (Rule 23(b)(3) class superior because highly unlikely that indigent non-English speaking plaintiffs would bring suit absent class certification); Patrykus v. Gomilla, 121 F.R.D. 357, 363 (N.D. Ill. 1988) (strip search case).

Our initial research suggests that, even when damages have been settled on a class-wide basis in strip search cases, generally only one-third or less of class members respond to notice and come forward to seek damages, even when all that is required is just filling out a questionnaire. Few if any class members ever come forward with their own lawyers to opt out and seek damages on their own, despite the availability of the recovery of legal fees pursuant to the fee shifting provisions of the civil rights laws, such as 42 U.S.C. §1988. Accordingly, if class certification on damages were denied here, we can expect few if any of the 23,000 class members to appear with lawyers to commence individual cases on their own, and thus few if any would recover anything.<sup>1</sup>

This is exactly what the defendants are counting on. Having finally been prevented by the Second Circuit from effectively escaping liability certification by conceding liability, defendants now hope to avoid any real monetary consequences for their conduct by escaping certification on damages. Defendants know full well that most of the victims would not be able to pursue individual damages litigation, for the same reasons the Second Circuit emphasized in determining that liability certification should not be denied: where individual damages are

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<sup>1</sup>Indeed, it bears reminding that the only person to our knowledge who litigated the constitutionality of the County's unconstitutional blanket strip search policy, in effect since at least 1984, was an attorney, Ray Shain, who in 1996 had the motivation and resources to commence the case which ultimately led to this class action case. Other than Shain and this case, we know of no other plaintiffs who have sought to challenge that policy or recover damages, even after the policy was declared unconstitutional in 1999.

relatively low, there is less incentive for an individual class member to come forward and pursue his or her claim individually, especially when he or she would be responsible for the costs of litigation themselves. Thus, there is a substantial risk that almost all of the 23,000 constitutional violations in this case will go unremedied if class certification on damages is denied and individuals are required to fend for themselves to pursue damages. Such result would provide yet another road map for constitutional violators to follow in seeking to avoid any real consequences for systemic unconstitutional conduct like that here.

Section 1983 has a dual purpose – compensation to civil rights victims and deterrence to future unconstitutional conduct. See Carey v. Piphus, 435 U.S. 247, 256-57 (1978). Failing to certify a damages class and adjudicating damages on a class-wide basis would undermine both of these purposes.

Denying class certification on damages would have other patently undesirable results. If even a small percentage of class members were to appear individually to try their damages claims, the Court would be inundated with hundreds if not thousands of individual cases on its docket, with the risk of wildly inconsistent jury verdicts on compensatory and punitive damages for human dignity violations of a similar nature resulting from the same blanket unconstitutional strip search policy.

Thus, requiring these class members to pursue individual damages actions creates the worst of both worlds and undermines the purposes of Rule 23 in every way – by effectively denying real-world relief to most class members, by failing to provide a comprehensive method to ensure that victims truly receive a fair remedy for their constitutional injury, by undermining consistency in adjudicating damages for similar injury, and by promoting inefficient and

burdensome individual litigation that might unnecessarily clog this Court's docket. The Second Circuit obviously recognized these pitfalls in instructing the Court to consider all the mechanisms available to it to address damages on a class-wide basis. And in fact, there are readily available, effective, and manageable models for doing so in the strip search context, since all class action strip search cases we have found have resulted in a class-wide resolution of damages claims, *see, e.g., Brecher v. St. Croix County*, 2004 WL 1196982 (W.D. Wis. 2004); *Bruce v. County of Renseelaer*, 2003 WL 22436281 (N.D.N.Y. 2003); *Dodge v. County of Orange*, 02-CV-769 (CM) (S.D.N.Y.); *Marriot v. Montgomery County*, 03-CV-531 (DNH) (N.D.N.Y.); *Bynum v. District of Columbia*, 02-CV-956 (RCL) (D.D.C.); *Bull v. County of Sacramento*, 01-1545 (Cal. Super. Ct.);<sup>2</sup> *Mack v. Suffolk County, et al.*, 191 F.R.D. 16 (D. Mass. 2000); *Tyson v. City of New York*, 97-CV-3762 (JSM) (S.D.N.Y.); *Doe v. Calumet City*, 1993 WL 512788 (N.D. Ill. 1993).

### III. METHODS FOR CLASS-WIDE DAMAGES ADJUDICATION

There are innumerable ways to adjudicate damages on a class-wide basis after certification. Significantly, based on a comprehensive review of the case law and conversations with other practitioners in this field, we know of no strip search case where certification, at least for liability, has been granted (which occurs in virtually every such case) that has not been resolved by settlement on a class-wide basis, and there is no reason that the same should not occur here.

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<sup>2</sup>Bull was a state court action involving federal constitutional claims.

A. Class-Wide Damages Resolution

There are a number of ways class damages claims have been resolved on a class-wide basis that could be applied here.<sup>3</sup>

First, all class members could simply share a fixed class-wide damages fund on an equal, pro-rata basis. This model was employed in the Marriot v. County of Montgomery case. We have annexed the distribution plan for that damages structure as Exhibit A.

A second way would be to create a tiered-system in which class members would be categorized and given points based on certain factors, such as, for example, the nature of the offense for which he or she was arrested, and/or the number of unconstitutional strip searches to which they were subjected. Then, damages would be distributed from a fixed class-wide damages fund, with those with more points receiving a greater share of the award. A successful example of this model of structuring class-wide damages was employed in Mack v. Suffolk County, supra. The Mack distribution formula is annexed hereto as Exhibit B.<sup>4</sup>

B. Class-Wide Damages Adjudication in the Absence of Settlement

In the event defendants, after defending an admittedly unconstitutional policy for almost eight years, remain unwilling to settle on a class-wide basis, there are other models by which

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<sup>3</sup>We have recently been provided with categorical data on the more than 23,000 class members, including age, gender, crime(s) charged, and number of admissions. After class certification on damages, and after analyzing the data, we expect to be able to engage in settlement discussions with defense counsel about which of these ways could most fairly and efficiently be applied in this case. In the unlikely event that the case is not settled, we could then recommend to defense counsel and the Court which of the methods summarized in Section B below could most fairly and efficiently be applied in this case to adjudicate the class members' damages claims.

<sup>4</sup>Other models, of course, have been employed and are available. See, e.g., Tyson v. City of New York, supra.

class damages claims can be litigated, borrowing from models employed in similar contexts where there may be some variance in the damages claims of class members but certainly, as here, not sufficiently individualized to override the strong factors supporting class certification.

One method is to employ the tier-system utilized in Mack, discussed above, with representative damages jury trials or hearings before a special master for a small sampling of individuals from each of the tiers (or subclasses) of plaintiffs. The average damages award per representatives of each subclass could then be applied as the damages award for all class members in each damages subclass. So, for instance, if the Court held damages trials or a special master conducted damages hearings for five representative members of one subclass and the average of all the damages awards was \$10,000, then all members of that subclass would be awarded \$10,000. The advantage of this method is that it permits limited evidentiary hearings to help determine class-wide damages awards while minimizing the burden on the Court and the expense to the parties.

Another method would be to follow the model set forth in Hilao v. Marcos, 103 F.3d 767 (9<sup>th</sup> Cir. 1996), which entailed conducting individual damages hearings for a larger, statistical sampling of subclass members. Hilao involved a class of torture victims of the Marcos regime, where the physical and mental/emotional distress injuries would be expected to vary more widely than the humiliation, human dignity and mostly garden-variety emotional distress injury here in the strip search context. Nevertheless, damages class certification was upheld by the Court of Appeals, along with the district court's trifurcation of the case. Stage one determined liability and stage two punitive damages liability and class-wide exemplary damages. The final stage of the litigation involved litigation of the compensatory damages for class members. This was

accomplished by taking a statistical sampling of 137 members of the approximately 10,000 member class. A special master conducted damages hearings for these 137 class members based on seven different factors, including mental abuse, fright and anguish, age of the victim, and physical and mental injuries. The Special Master then made recommendations for 131 class members (recommending against awards for 6 members), which were divided into subclasses. He then determined the average award for each subclass and recommended that corresponding damages amount be awarded to each corresponding subclass member. The same method could be utilized in this case, with class-wide punitive damages adjudication last to comport with more recent Supreme Court jurisprudence on punitive damages.

Another approach would simply be to appoint a special master to oversee individual damages hearings, which would have the benefit of some uniformity of assessment among class members.

Yet another possible method would be comparable to that employed in Lowery v. Circuit City Stores, Inc., 158 F.3d 742, 754 (4<sup>th</sup> Cir. 1998), which we discussed in our February 25, 2003 reply brief in support of our renewed motion for class certification. A jury would be empaneled for a period of a few weeks, hearing and adjudicating as many individual class members' damages claims as feasible. When that jury's period was complete, a new jury would be empaneled for the same period, and so forth until all the class members damages claims were tried.

The point is to certify the class for damages so that damages can be determined on a class-wide basis, because it is both feasible and the right thing to do -- to make sure that the constitutional rights of as many class members as possible can be vindicated by an award of

damages while simultaneously deterring these defendants and other governmental institutions from employing unconstitutional schemes in the future. Once defendants know that they can not escape responsibility for these violations by avoiding class certification on damages, we can then have a serious settlement discussion. If we can not settle, then we could have a more concrete discussion as to which of the feasible methods summarized above is best suited to the facts of this case. By that time, we will have had an opportunity to analyze the data recently provided to us in digital form by the County relating to the 23,000 class members, an analysis which is necessary in order for class counsel to recommend a more specific method of adjudication in the absence of settlement, for we will then know what factors, if any, we think meaningfully distinguish the class members.

IV. CONCLUSION

Our 23,000 class plaintiffs have so far waited between eight and eleven years for their damages remedy. A damages class should be certified without further delay, together with such other and further relief to plaintiffs which to this Court seems just and proper.

Date: New York, New York  
January 17, 2007

Respectfully submitted,



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Robert Herbst

Spencer Freedman, Esq.  
Of Counsel

To: Dennis Saffran, Esq., Counsel for Defendants  
Matthew D. Brinkerhoff, Esq., Counsel for Plaintiffs  
Jeffrey G. Smith, Esq., Counsel for Plaintiffs

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

PAUL MARRIOTT, BARBARA DAVIS,  
and ANDY RIVERA, on behalf of  
themselves and a certified class of others  
similarly situated,

Plaintiffs,

No. 03-CV-0531 (DNH/DEP)

THE COUNTY OF MONTGOMERY,  
*et. al.*,

Defendants.

**PLAN OF DISTRIBUTION**

Defendants County of Montgomery, Michael Amato, Jeffrey Smith, Kevin Snell, Sue Buddles and John Pecora (the "Defendants") have agreed to settle this class action by, among other things, paying \$2.0 million into a Settlement Fund for the benefit of class members and the named plaintiffs in this litigation. Subject to Court approval, Class Counsel intend to distribute the Settlement Fund as set forth below. As more fully set forth in the Settlement Agreement and the Class Notices, class members have the right to submit to the Court objections for its consideration to the Settlement and/or this Plan of Distribution.

**Attorneys' Fees, Costs, Administrative Expenses and Incentive Awards**

Pursuant to the Settlement Agreement and applicable law, Class Counsel intend to seek from the Settlement Fund reimbursement for the costs advanced in the prosecution of this litigation and an award of attorney's fees. Plaintiffs' counsel will apply to the

Court for an award of costs and attorney's fees of no more than thirty percent (30 %) of the settlement fund, or \$600,000. Additionally, Class Counsel proposes to allocate up to \$35,000 of the settlement fund to pay incentive awards to class representatives Paul Marriott (\$12,500), Barbara Davis (\$15,000) and Andy Rivera (\$7,500), who Class Counsel maintain provided assistance to them during the prosecution of this litigation. Deducting for estimated administrative expenses of \$65,000 and for attorney's fees, costs and incentive awards, class counsel estimates that there will be approximately \$1,300,000 in the settlement fund for distribution to class members.

#### **Distribution to Class Members**

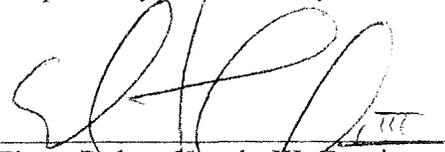
Class Counsel proposes that approximately \$1.3 million of the settlement fund be allocated to pay claims by class members, and that each class member who files a valid claim will receive their *pro rata* share of the settlement fund when the fund is distributed after final approval. Based on data provided by Montgomery County when the initial notice to class members of the certification of this action was mailed in September, 2005, Class Counsel estimates the class size here to be approximately 1,650 individuals. Individuals who were admitted to the Montgomery County Jail on more than one occasion will only be allowed to file one claim against the settlement fund. When considering the claims rates achieved in similar settlements, Class Counsel estimates that each member of the settlement class that files a claim will receive between \$2,000 and \$3,000 as a settlement payment.

#### **Court Approval**

At the time of the final approval hearing, Class Counsel will detail to the Court the final distribution to be made to settlement claimants and the amount to be paid per

claim. Subject to the Court's approval, all proceeds to class members will then be paid based on the final distribution amounts provided at the time of the final approval hearing.

Respectfully Submitted by:



Dated: August 31, 2006  
Amsterdam, New York

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**LEAD COUNSEL FOR PLAINTIFFS**

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BRONWYN FORD, KATRINA MACK, et al., Plaintiffs	)	
v.	)	Civil Action No. 98-11346-NG
SUFFOLK COUNTY, et al., Defendants	)	

DISTRIBUTION FORMULA

I. DEFINITIONS

1. A "Claimant" is a person who submits a valid complete Settlement Claim Form postmarked on or before September 20, 2002 to the claims administrator.

2. A "Participating Class Member" is a claimant who has been verified as a class member by the claims administrator after review of the information supplied by the claimant in the Settlement Claim Form.

3. The "Data" is the electronic booking data used by Suffolk County which has been provided to plaintiffs' counsel.

II. PARTICIPATING CLASS MEMBER VERIFICATION

4. The claims administrator will verify that a claimant is a class member by reviewing the information provided by the claimant in the Settlement Claim Form and checking it against the data. This information includes the claimant's name, social security number, date of birth and any alias information.

5. If a claimant cannot be verified as a class member, the claims administrator will send a Notice of Claim Denial to the claimant within 14 days of the deadline for submitting Settlement Claim Forms. A copy of the notice is attached as Exhibit D. Any claimant who disagrees with the determination that she is not a class member may appeal to a special master to be appointed by the Court within 14 days from the date the claims administrator sends the claimant the Notice of Claim Denial. The claimant must submit a written statement with supporting documentary evidence which shows that the data is incorrect or incomplete. The evidence may include a notarized letter from the County, criminal offender's record information (CORI), or certified court documents from the criminal case. The special master will make a determination of class membership within 30 days of the claimant's appeal of claim denial and will report his findings to the claims administrator and class counsel. Rulings by the special master shall be final and binding.

6. Rose King, attorney for Suffolk County, has also agreed to accept telephone calls from claimants to verify the data. If attorney King is able to verify that a claimant is a class member, she will forward the verified class member's booking information to the claims administrator and class counsel. The verified class member will need not appeal to the special master.

7. If claimant is verified as a class member, the claims administrator will identify all of the class member's booking admissions into the Jail during the class period by reviewing the name, Suffolk County unique identification number, social security number and date of birth of the class member.

III. SETTLEMENT CATEGORIES

8. To determine each participating class member's share in the settlement, the claims administrator will place the class member into one of four settlement categories based on the data.

9. Membership in a settlement category will be determined based on the crime charged at time of the participating class member's admission into the Nashua Street Jail. If the participating class member was charged with more than one crime during the class period, the most severe crime determines her membership in a settlement category.

10. The four settlement categories are as follows:

- a. **Settlement Category I** consists of class members who were charged with any one of the following crimes during the class period:

<u>CODE</u> <sup>1</sup>	<u>DESCRIPTION</u>
ABD	A&B DOMESTIC/FAMILY ABUSE
DIS	DISORDERLY
LAR	LARCENY OVER
LAU	LARCENY UNDER
MDP	MALICIOUS DEST. PROPERTY
LMV	M/V - LARCENY OF M/V
WOL	M/V - OPER. W/O LICENSE
UWA	M/V - USE W/O AUTHORITY
MVL	M/V - VIOL. OF M/V LAW
NSP	NON-SUPPORT
OUI	OPERATING UNDER INFLUENCE
OTM	OTHER MISDEMEANOR
SMV	RECEIVING STOLEN M/V
RSP	RECEIVING STOLEN PROPERTY
SHO	SHOPLIFTING
THR	THREATEN TO COMMIT CRIME

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<sup>1</sup> The three-letter crime code assigned by Suffolk County during the admissions process at the Nashua Street Jail.

TRE	TRESPASSING
VRO	VIOL. OF RESTRAIN. ORDER
WIT	WITNESS

b. Settlement Category II consists of all class members who were charged with any one of the following crimes during the class period:

<u>CODE</u>	<u>DESCRIPTION</u>
ABC	A&B ON CORR. OFFICER
APO	A&B ON A POLICE OFFICER
AAF	ACCESSORY AFTER FACT
ACC	ACCESSORY BEFORE FACT
AFF	AFFRAY - COMMON LAW
ASS	ASSAULT - OTHER
ADW	ASSAULT D/W
A&B	ASSAULT & BATTERY
AGA	ASSAULT & BATTERY D/W
RES	ATT. RESCUE PRISONER
ATC	ATTEMPT TO COMMIT A CRIME
CRV	CIVIL RIGHTS VIOLATION
SPR	CONSPIRACY
ESC	ESCAPE
UTT	FORGERY / COUNTERFEITING
FUG	FUGITIVE
OTH	OTHER FELONY
PVL	PAROLE VIOLATION
PBT	POSSESSION BURGLARY TOOLS

c. Settlement Category III consists of all class members who were charged with any one of the following crimes during the class period:

<u>CODE</u>	<u>DESCRIPTION</u>
A/R	ARMED ROBBERY
ARS	ARSON OR BURNING PROPERTY
AID	ASSAULT IN DWELLING ARMED
ARU	ASSAULT W/I ROB UNARMED
AWI	ASSAULT W/I TO MURDER
ARA	ASSAULT W/I TO ROB ARMED
B&E	BREAKING & ENTERING DAY
BEN	BREAKING & ENTERING NIGHT
BUR	BURGLARY ARMED OR ASLTNG
CAR	CARJACKING
CFA	CARRYING FIREARM W/O LIC
EXT	EXTORTION
HOM	HOMICIDE/MURDER
IAB	INDECENT A&B

IAC	INDECENT A&B ON A CHILD
INW	INTIMIDATING A WITNESS
KID	KIDNAPING
LFP	LARCENY FROM PERSON
MAY	MAYHEM
PFA	POSS. FIREARM W/O ID
ROC	RAPE OF CHILD
STA	STALKING
BUU	UNARMED BURGLARY
ROB	UNARMED ROBBERY
WEA	WEAPONS POSSESSION

d. Settlement Category IV consists of all class members who were charged with any one of the following crimes during the class period:

<u>CODE</u>	<u>DESCRIPTION</u>
CNW	COMMON NIGHT WALKER
CCS	CONSPIRACY VIO DRUG LAWS
PCA	DRUG POSSESSION - CLASS A
PCB	DRUG POSSESSION - CLASS B
PCC	DRUG POSSESSION - CLASS C
PCD	DRUG POSSESSION - CLASS D
PCE	DRUG POSSESSION - CLASS E
DTR	DRUG TRAFFICKING
MDA	MFG/DIST CL. A
MSA	MFG/DIST CL. A SCH. ZONE
MDB	MFG/DIST CL. B
MSB	MFG/DIST CL. B SCH. ZONE
MDD	MFG/DIST CL. D
MSD	MFG/DIST CL. D SCH. ZONE
MDE	MFG/DIST CL. E
DAB	OTHER DRUG CHARGE
PIS	POSS INST ADMIN CONTR SUB
PSA	POSS. W/I CL. A SCH. ZONE
PSB	POSS. W/I CL. B SCH. ZONE
PSC	POSS. W/I CL. C SCH. ZONE
PSD	POSS. W/I CL. D SCH. ZONE
PIA	POSS. W/I TO DIST. CL. A
PIB	POSS. W/I TO DIST. CL. B
PIC	POSS. W/I TO DIST. CL. C
PID	POSS. W/I TO DIST. CL. D
PIE	POSS. W/I TO DIST. CL. E
PRO	PROSTITUTION
SFF	SEX FOR FEE
SEX	SEX OFFENSE - OTHER
UFP	UTTERING FALSE PRESCRIPTION

11. If a participating class member was booked into the Jail more than once during the class period, the class member will be dropped down one category (i.e., from category I to category II, etc., except category IV, the lowest category).

#### IV. POINT DISTRIBUTION

12. The Settlement Fund will be distributed among participating class members, after approval and payment of attorney's fees and expenses and bonuses for class representatives, based on the following formula:

- a. Class members in Settlement Category I shall receive 20 points.
- b. Class members in Settlement Category II shall receive 10 points.
- c. Class members in Settlement Category III shall receive 5 points.
- d. Class members in Settlement Category IV shall receive 1 point.

13. If a participating class member unsuccessfully contests the determination of her membership in a settlement category, she will be penalized by deducting 20% of the point rating she would otherwise have been entitled to.

#### V. SETTLEMENT FUND DISTRIBUTION

14. The Settlement Fund is the \$10 million settlement amount paid to the plaintiffs by the defendants plus any interest accrued up to the date of distribution after payment of attorney's fees and expenses and bonuses.

15. The monetary value of each point shall be determined by dividing the Settlement Fund by the total number of points in the class. The total number of points is determined by multiplying the number of participating class members in each

Settlement Category by its respective number of points and then adding the sub-total points of each Settlement Category.

16. Bonuses will be paid to compensate class representatives and class members who spent time working with class counsel to achieve the settlement. These checks will be paid at the same time as payments to class members. Class members will receive a bonus for each of the following activities as follows:

- a. Serving as a class representatives - \$15,000.
- b. Being the subject of a deposition - \$5,000.
- c. Being selected for a damages trial and preparing to testify - \$4,000.
- d. Providing an affidavit in support of the plaintiff's motion for summary judgment - \$500.
- e. Speaking with newspaper, radio or television reporters about the case before the case was settled - \$1,500.

Class counsel will provide the class administrator with a list of class members entitled to bonuses.

17. Attorney's fees will be 30% of the total settlement, minus the amount of interim attorneys fees already paid to class counsel, subject to approval by the Court.

18. Expenses, including the cost of the claims administrator, the special master and other costs of administration of this settlement, will be paid from the settlement fund subject to approval by the Court. Class counsel shall provide itemization of all such expenses.